

UTAH AIR QUALITY BOARD MEETING
November 2, 2005

MINUTES

I. Call to Order

John Veranth called the meeting to order at 1:32 p.m.

Board members present:

Scott Lawson	Wayne Samuelson	John Veranth
Jerry Grover	JoAnn Seghini	Ernest Wessman
Jim Horrocks	Dianne Nielson	Stead Burwell on conference call

Executive Secretary: Richard W. Sprott

Mr. Veranth introduced the new board member, Scott Lawson. Mr. Lawson introduced himself. He represents the mining industry with 20 years experience.

Mr. Veranth received a thank you note from Kathy Utley (Jeff Utley's wife) regarding the letter the board had sent the previous month.

II. Date of the Next Air Quality Board Meetings

December 7, 2005, January 4, 2006 and February 1, 2006.

III. Approval of the Minutes of the September 7, 2005 and October 5, 2005, Board Meeting

Mr. Grover commented that he was present at the October board meeting on the conference call and that it was not recorded in the October minutes. Mr. Veranth had some minor changes in the September minutes.

- Ernest Wessman made the motion to approve September and October's minutes as ammended. Jim Horrocks seconded and the Board approved unanimously.

IV. In the matter of: Sevier Power Company Power Plant: Case No.: DAQE-AN2529001-04. Motion to Compel Discovery by Executive Secretary. Presented by: Christian Stephens.

Ernest Wessman recused himself from this action item.

Mr. Stephens explained the purpose of the discovery phase. He stated that it is to facilitate a fair hearing with full and complete disclosure of all evidence and relevant testimony. He said in order to prepare for Sevier County Citizen's (SCC) request for agency action the Executive Secretary served written questions and a request for production on August 23d of this year.

Through those they sought identification of witnesses, production of documents and other relevant evidence. Mr. Stephens stated they have not received all the required documents and the documents they have received were received in a manner where they could not identify which claims the documents support. Mr. Stephens also stated that in order for us to prepare our case, they need to have their discovery request answered and they have not received the required results. He said in order for this process to work it needs to be in accordance with the deadlines and processed that the Board has approved.

Mr. Stephens then stated that the Executive Secretary respectfully requests that the Board issue an order that would compel full and timely disclosure by SSC within 30 days. There should be no allowance for objections and failure to comply with the order may result in dismissal of claims or their case.

Mr. Grover asked what was the original date that they were supposed to be received by. Mr. Stephens stated October 3rd. James Kennon, President of Sevier County Citizens for Clean Air and Water stated their difficulties and struggles in preparing the documents needed for the discovery process. He also stated that the deadlines were hard to meet. Mr. Grover asked if an additional 30 days is acceptable. Mr. Kennon stated there was no objection to 30 days.

Mr. Veranth asked can we hear from Mr. Findlandsen. Fred Findlandsen represents Sevier Power Company. He stated that after reviewing the Executive Secretary's list Sevier Power would like the same list. He further stated that he knows it is difficult but we already have a one month delay and that they encourage the Board to give them another 30 days and if they don't comply that they default. He then stated that they wanted the process to be fair but the process needs to proceed.

Mr. Veranth recalled the Rocky Mountain Asbestos case. He then asked Mr. Stephens what the rule is in regards to tabs in documents that are to be provided in discovery. Mr. Stephens stated that the documents can be produced as they are kept in the ordinary course of business in a way that correlates them with the claims that are outlined. Mr. Veranth then verified that there are no specific rules with respect to the particular format that documents are provided in the discovery process. Mr. Stephens stated that SSC agreed to provide the documents in the format requested. Mr. Veranth asked Mr. Stephens what he was looking for. Mr. Stephens stated that SSC alleged that the Executive Secretary made errors in the permitting process and that those errors resulted in an invalid permit. So presumably SSC has some evidence that supported the initial allegations. Mr. Veranth thought that SSC was being overly ambitious in what they committed to in the schedule for the discovery. Mr. Stephens stated they agreed to the schedule.

Mr. Sprott stated that we would like the Board to act on a formal order so that it is clear to all parties what their responsibilities are. There was more discussion about what documentation is required in the discovery process and how difficult the process has been for SSC given its many members and volunteer staff. Mr. Wessman stated that PacifiCorp has no role or interest in the discovery process. He was speaking from the point of view of the process of the board. He then stated there needs to be clarity about the rules of discovery and requirements of persons or organizations that have made a claim about what their claim is and the back up material to

substantiate the claim for the case to move forward. An extension may be in order but he agreed with the Executive Secretary that a date needs to be made certain. There needs to be an understanding on the part of SSC and that it must meet the date.

Mr. Kennon stated he wanted the last line taken out in the order. (That the Board may dismiss the appeal at a later date.) Mr. Horrocks stated the key word is “may.”

A discussion on supplementation followed. Mr. Finlinson stated that part of the discovery process is to find out what evidence they really had back in November when they filed the request for agency action.

Mr. Veranth asked Mr. Kennon about his allegation that he was denied another meeting to define the scope of discovery. Richard Rathbun, Assistant AG, stated that after discovery was set the parties met and there was a discussion that Mr. Kennon suggested they meet in Richfield and talk about the case. Mr. Rathbun stated he was always willing to talk about the case but saw no need to go down there to tell them how to conduct their case. He would conduct discovery as appropriate on behalf of the Executive Secretary. Mr. Kennon can conduct his case.

The order states that SSC must produce the required documents within 30 days, December 2, 2005.

- Mr. Grover made a motion to approve the order presented before them. Ms. Nielson seconded. The motion passed unanimously.

V. Final Adoption: Amend R307-214-2, National Emissions Standards for Hazardous Air Pollutants. Presented by Eileen Brennan.

Ms. Brennan stated that following the August Board meeting the update to this rule was submitted for public comment and no comments were received and there were no comments received at the hearing that was held September 20, 2005. Ms. Brennan then stated that the staff is recommending that the Board approve the final adoption of R307-214-2.

- Mr. Wessman moved that they adopt R307-214-2 as proposed and has been submitted for public comment. Mr. Grover seconded. The motion passed unanimously.

VI. Final Adoption: Amend R307-840, Lead-Based Paint Accreditation, Certification and Work Practice Standards. Presented by Robert Ford.

Mr. Ford stated that on August 3, 2005 the Air Quality Board purposed for comment amendments to R307-840, Lead-Based Paint Accreditation, Certification and Work Practice Standards. R307-840 was purposed for comment to incorporate by reference an addition and a modification to 40 CFR Part 745. He then stated that a public hearing was held on September 21, 2005 and no oral or written comments were received about this proposal. Mr. Ford then stated that the staff recommends that the Board adopt R307-840 as proposed at the August board meeting.

- Mr. Grover made the motion to approve to adopt R307-840. Mr. Samuelson seconded. The motion passed unanimously.

VII. Five-Year Reviews: R307-170 Continuous Emission Monitoring. Presented by Mat Carlile

Mr. Carlile stated that the R307-170 Continuous Emission Monitoring Program (CEM) five-year review is currently due. He then stated R307-170 establishes consistent requirements for all sources required to install a continuous emission monitoring system and for sources that opt into the (CEM) program. In addition, R307-170 is a federally required component of Utah's state implementation plan (SIP) and cannot be deleted without EPA approval.

He further stated some requirements of R307-170 conflict with the current version of 40 CFR Part 75, CEM provisions of the federal Acid Rain Program, DAQ staff drafted revisions to R307-170, these changes were proposed for public comment from October 1, 2005 to October 31, 2005, no oral or written comments were received.

He then stated that all state agencies are required by the Utah Administrative Rulemaking Act to review each of their rules at least every fifth year. Because the statute defines "agency" as the state board or other entity that is authorized by statute to make rules, the responsibility to complete the review falls to the Air Quality Board.

Mr. Carlile stated that the staff recommends that the Board continue the rule.

- Mr. Wessman made the motion to continue the rule. Ms. Seghini seconded. The motion passed unanimously.

VIII. Propose for Public Comment: Repeal and Re-enact R307-405, Permits: Major Sources in Attainment or Unclassified Areas (PSD); Amend R307-110-9 and State Implementation Plan Section VIII, Prevention of Significant Deterioration; Amend R307-101-2, Definitions. Presented by Colleen Delaney and Jim Schubach.

Ms. Delaney provided an overview of the New Source Review (NSR) Program with a slide presentation. See attachment #1.

Mr. Schubach stated that on December 31, 2002, EPA published a major revision to the federal PSD program that is commonly referred to as the NSR Reform Rule. All non-delegated states are required to submit a SIP revision to EPA that incorporates the NSR Reform Provisions by January 2, 2006.

Mr. Schubach then stated that as part of the process of implementing this rule, the Division implemented an extensive stakeholder outreach program that included two open access stakeholder meetings in April 2004 and March 2005 and those were followed with two smaller rule development stakeholder meetings on April 19 and 27, 2005. Mr. Schubach further stated that the stakeholders were informed, by email, on a regular basis of changes and developments in both the federal and state rules. Stakeholders were encouraged to join the rule development group or comment on the development of the rules by email. The

Division developed a dedicated NSR Reform website to present information on the NSR Reform program and links to the members of the Division staff working on the project.

Mr. Schubach then discussed the schedule. As of the September Board meeting Utah was on track to meet this deadline, but the uncertainty caused by the DC Circuit Court decision delayed the rulemaking process and put the implementation on hold pending direction from EPA. The Division recently received direction from EPA to proceed with the NSR Reform program. EPA has indicated that they do not plan to change the January 2, 2006 deadline for the SIP. It is the Division's position that it is in the best interest of the State to move forward given EPA's intention to take action against states that have not shown a good faith effort to implement this reform package.

Mr. Schubach described the programs upheld by court, such as PAL (Plant-wide Applicability Limits) and the new applicability procedure called the actual-to-projected-actual test. He then touched on the provisions vacated by the DC Court decision that included clean units and pollution control projects. Mr. Schubach then stated that the DC Court remanded back to EPA for further clarification on the recordkeeping language for the actual-to-projected-actual test. Mr. Schubach stated that the Division recommends that the recordkeeping requirements of the new rule be implemented as written, while the EPA responds to the Court's request.

Mr. Schubach went on to say that the Division has found that the most straightforward approach to implementing federal rules is to directly incorporate the requirements by reference, rather than repeating the requirements in Utah's rules. This approach separates the requirements of the federal and state NSR programs promoting clarity and uniformity for permitting sources. In addition, the application of EPA interpretive guidance to the Utah PSD program is facilitated by the uniformity of the two rules.

The Division is recommending repealing the existing PSD rule, R307-405 and then re-enacting the rule as an incorporated by reference to 40 CFR 52.21. He then discussed the provisions that were excluded, the Equipment Replacement Provision and the Clean Unit and Pollution Control Project provision, because they were vacated by the DC Court decision.

Mr. Veranth recognized comments from the public.

Kathy Van Dame read into the record a letter dated November 2, 2005 from Vicki Patton, Senior Attorney, Rocky Mountain Office of Environmental Defense, regarding the concerns with Utah's initiation of rulemaking to adopt the EPA's December 31, 2002 New Source Review revisions. See attachment #2.

Ms. Van Dame stated her views of the NSR program. She expressed her concerns about the EPA stakeholder process, how that was stopped, and how when it was started again that the EPA rules were unfamiliar. She then stated that an air quality analysis needs to be done if it goes out to public comment.

Rick Sprott stated that the Division certainly should respond to the comments if they are submitted. Many of these emissions analysis are in states that don't have minor NSR programs or have old sources. These NSR Reform Rules could create a problem in those states. In the course of developing the rule, the universe of Utah sources that are affected by this and their circumstances make it pretty clear that the emission numbers represented in the analyses don't exist in Utah. The impact that is suggested and the uncertainty and the fear that somehow there is going to be serious impact to the air quality standards is unfounded. He then stated that part of point of Colleen's presentation was that we have all the special modeling rules and other things we do that are part of the Utah SIP today and they all work together. Our programs have already accomplished what many other states have not accomplished or are not able to accomplish with their current NSR rules.

Mr. Burwell made comments about how there was no meaningful information distributed to the air quality board members regarding the impact to the air quality. He also wanted to know why we are so compelled to meet the deadline. Mr. Sprott stated that this is proposed for public comment. It is not a request from EPA, but it is required to comply with Federal law. Mr. Wessman asked if there would be more details and if the Board would be informed of the comments made during the public comment period. Mr. Sprott stated that the Division would be obligated to provide data or information to the Board before a final vote or recommend some other action. The Board can change course because the final decision is the Board's. He also stated that he would be happy to provide a meeting with stakeholders at the beginning of the comment period. There was more discussion on the analysis process and what the Board can expect from the Division during the public comment process.

Mr. Horrocks stated that he would like to give the public enough information and to move forward with the public comment period. Ms. Nielson suggested having a 45-day comment period and additional analysis. Mr. Wessman stated that may be appropriate but maybe not necessary. He then stated that the Division needs to weigh all comments and then see if an additional comment period is needed. He suggested that the Board proceed to public comment and move on with the process.

- Jim Horrocks made the motion to propose for public comment to repeal and re-enact R307-405, Permits: Major Sources in Attainment or Unclassified Areas (PSD); Amend R307-110-9 and State Implementation Plan Section VIII, Prevention of Significant Deterioration; amend R307-101-2, Definitions with a 45-day comment period and organize a stakeholders meeting. Ms. Seghini seconded. The motion passed unanimously.

IX. Propose for Public Comment: Repeal and Re-enact R307-401, Permits: New and Modified Sources; Repeal R307-413, Permits: Exemptions and Special Provisions; Amend R307-101-2, Definitions; and Amend R307-325, Davis and Salt Lake Counties and Ozone Nonattainment Areas: Ozone Provisions. Presented by Colleen Delaney and Jim Schubach.

X. Propose for Public Comment: Amend R307-410, Permits: Emission Impact Analysis; Amend R307-101-2, Definitions. Presented by Colleen Delaney and Jim Schubach.

Mr. Veranth asked if there was anything substantial on these two agenda items (IX and X) that had not been discussed as part of item VIII. Ms. Delaney said no.

- Mr. Grover made the motion to propose for public comment repeal and re-enact R307-401, Permits: New and Modified Sources; repeal R307-413, Permits: Exemptions and Special Provisions; amend R307-101-2, Definitions; and amend R307-325, Davis and Salt Lake Counties and Ozone Nonattainment Areas: Ozone Provisions. And propose for public comment: Amend R307-410, Permits: Emission Impact Analysis; amend R307-101-2, Definitions with a 45-day comment period. Ms. Nielson seconded. The motion passed unanimously.

XI. Request for Variance: DAQE-AN0007019-05. Variance from Annual Production Limitation. Presented by Holcim, Inc., Kevin Ovard and John Todd.

Mr. Sprott provided some background information. He stated that the Division had been working with Holcim on this issue for the past 15 months and that it is important to point out that they have had a positive relationship with the firm and that Holcim has been attentive to environmental and air quality issues. The Division also thinks that a good solution is being proposed today.

Mr. Ovard discussed that Holcim has found ways to increase productivity by optimizing their production equipment. He stated there is a great demand for cement and that there was a 6.8% increase in cement produced for 2004. He emphasized the importance of granting the variance and stated that Holcim has reviewed the conditions and has agreed to these conditions if the variance is granted. He respectfully requested that the Board grant this variance and remove the production limit.

Mr. Horrocks asked if the variance is granted what would their production increase be and over what period of time and of the current sales volume what percentage is shipped outside of Utah. Mr. Todd stated that the production increase would be 5% per annum and the percentage shipped outside of Utah would be about 10%.

Mr. Wessman asked what was the notice of intent for in relation to their existing production limit. John Jenks, a DAQ/NSR Engineer responded that when the initial application was submitted, the company requested to remove their production limitation. The state has reviewed that and still feels a production limit needs to be imposed, although it would be mostly for modeling and to be able to verify particulate emissions.

Mr. Horrocks asked how many cement manufacturers there are in the state of Utah. Mr. Jenks stated that there were two, Holcim and Ashgrove. Mr. Horrocks asked if they might be getting a request for a variance from Ashgrove. Mr. Jenks stated that Ashgrove would probably go through the regular permit process.

Ms. Nielson asked why the variance was requested for a year. Mr. Jenks stated that the process involves modeling, a public comment period and a 60-day period for the Title V permit to be updated and reviewed by EPA and that would take at least six months.

Ms. Nielson stated that it would be helpful if the staff provided quarterly updates in terms of the progress of completing the permit, the compliance of Holcim with the variance requirements and the concerns that have been raised due to the increased emissions.

- Mr. Grover made the motion to grant the variance for approval order DAQE-AN0007019-05 for annual production limitation with quarterly reports from the staff. Mr. Lawson seconded. The motion passed unanimously.

XII. Informational Items

Bob Dalley stated the September 10, 2005 was a high wind day. There were no further questions.

Meeting was adjourned at 3:56 p.m.